

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 SECURITIES AND EXCHANGE  
5 COMMISSION,

6 Plaintiff,

7 v.

15 Civ. 894 (WHP)

8 CALEDONIAN BANK LTD.;  
9 CALEDONIAN SECURITIES LTD.;  
10 CLEAR WATER SECURITIES, INC.;  
11 LEGACY GLOBAL MARKETS S.A.;  
12 and VERDMONT CAPITAL, S.A.,

13 Defendants.

14 -----x  
15 New York, N.Y.  
16 May 20, 2016  
17 3:25 p.m.

18 Before:

19 HON. WILLIAM H. PAULEY III,

20 District Judge

21 APPEARANCES

22 BRIDGET M. FITZPATRICK  
23 PATRICK R. COSTELLO  
24 DEREK S. BENTSEN  
25 PAUL GIZZI  
Attorneys for Plaintiff

PROSKAUER ROSE LLP  
Attorneys for Defendants Caledonian Bank Ltd.  
and Caledonian Securities Ltd.  
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SIGAL P. MANDELKER  
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KASOWITZ BENSON TORRES & FRIEDMAN  
Attorneys for Intervenor Sentinel Trust Services Limited  
BY: TREVOR J. WELCH  
KALITAMARA MOODY  
JOSHUA GELNICK

1 (Case called)

2 MS. FITZPATRICK: Good afternoon, your Honor, Bridget  
3 Fitzpatrick along with Patrick Costello, Derek Bentsen and Paul  
4 Gizzi for the SEC.

5 THE COURT: Good afternoon.

6 MS. DALE: Margaret Dale, Sigal Mandelker, Massiel  
7 Pedreira.

8 THE COURT: Good afternoon.

9 Is Sentinel now here?

10 MR. WELCH: Yes, your Honor. Trevor Welch, Kasowitz  
11 Benson, for Sentinel. These are my colleagues Kali Moody and  
12 Josh Gelnick.

13 THE COURT: Mr. Welch, don't you think you owe all of  
14 the counsel and the Court an apology. This matter was set for  
15 3:00. My chambers, we have been reaching out to you,  
16 Mr. Kasowitz and everybody else who signed the brief on behalf  
17 of Sentinel. We couldn't get a hold of anybody at Kasowitz.  
18 And even a few moments ago nobody is even answering the main  
19 telephone number for Kasowitz. I was coming out on the bench  
20 to hear argument from those who were here to respond to your  
21 reply brief.

22 Now that I have prompted you, do you want to  
23 apologize?

24 MR. WELCH: Absolutely, your Honor.

25 THE COURT: What's the reason that you're 25 minutes

1 late?

2 MR. WELCH: The reason is that I misunderstood that  
3 the hearing was at 3:30. I was actually in the hallway. I  
4 apologize. I did not mean to keep the Court waiting. It's an  
5 error on my part. I accept the blame.

6 THE COURT: It's as clear as a bell on the docket.  
7 The scheduling order couldn't be clearer. Lawyers have  
8 traveled here from Washington and from midtown. I am not sure  
9 which may be the more difficult distance to navigate on a  
10 Friday afternoon.

11 MR. WELCH: Again, I apologize, your Honor.

12 THE COURT: Do you want to be heard?

13 MR. WELCH: Yes, your Honor.

14 THE COURT: Take the podium.

15 MR. WELCH: For the record, your Honor, my name is  
16 Trevor Welch, Kasowitz Benson. We are here counsel for the  
17 proposed intervenor, which is Sentinel Trust Services Limited,  
18 and Sentinel seeks to intervene to object to the proposed  
19 consent judgment.

20 THE COURT: What is the specific form of relief that  
21 you're actually seeking from this proposed intervention?

22 MR. WELCH: We would like to submit a brief in  
23 opposition to the proposed judgment.

24 THE COURT: Are you seeking any damages?

25 MR. WELCH: We are not seeking damages, your Honor.

1 THE COURT: And what alterations would you be seeking?

2 MR. WELCH: I'm happy to discuss that. The consent  
3 judgment has a number of features which we find objectionable,  
4 to say the least. There is a \$25 million judgment that's  
5 imposed jointly and severally against Caledonian Bank and  
6 Caledonian Securities. In this case Caledonian Bank did not  
7 make any commissions and did not sell the securities at issue.  
8 Caledonian Securities sold the securities at issue and made  
9 \$1.3 million in commission.

10 The proposed consent judgment, which they waive  
11 collection, is \$25 million, which is 20 times the commission  
12 that Caledonian Securities recovered. What is the possible  
13 basis for that? I respectfully suggest that the SEC is  
14 attempting to insulate itself from liability in future actions  
15 in which we intend to assert claims against the SEC. This will  
16 be a credit or a setoff against any judgment that we would get  
17 against the SEC for its misconduct in this action.

18 The \$25 million with respect to Caledonian Securities  
19 is way out of proportion and not in line with case law in other  
20 cases. And with respect to Caledonian Bank, Caledonian Bank,  
21 which was the primary injured party here, there is no rational  
22 basis.

23 We put in an affidavit explaining that the bank, as  
24 distinguished from the securities entity, did not participate  
25 in the securities transaction, acted literally as a passive

1 bank, and made no commissions. It's hard for me to fathom why  
2 the bank would be jointly and severally liable for \$25 million  
3 unless the SEC was attempting to insulate itself from liability  
4 in a future action. That's primarily what we object to.

5 In addition, the consent judgment would commit  
6 Caledonian Bank not to even do anything that would suggest that  
7 there is no factual basis for the SEC's allegations when  
8 counsel for the liquidators said last time that we were here  
9 they had no idea if there was a factual basis. Now, we are not  
10 conceding that there is or would be a res judicata or  
11 collateral estoppel issue, but we are concerned about that.

12 THE COURT: How does committing Caledonian Bank to do  
13 something commit your client, Sentinel, to do something?

14 MR. WELCH: Well, it doesn't, your Honor.

15 THE COURT: Right. Why should your client, Sentinel,  
16 care what Caledonian is obliged to do under the consent decree?

17 MR. WELCH: Again, we are concerned about collateral  
18 estoppel and res judicata issues if we assert claims based on  
19 the same facts that the SEC alleged in their complaint. I  
20 don't want to concede that and we would dispute that. But it  
21 is a risk.

22 I think it would be helpful if I explained who  
23 Sentinel is, what Sentinel is and what its interest is here, if  
24 I may. Sentinel Trust Services is the sole registered  
25 shareholder of CGFSI. CGFSI is the sole registered shareholder

1 of Caledonian Securities and Caledonian Bank. As the  
2 registered shareholder of CGFSI, it has the exclusive right to  
3 exercise any rights that those shares have. It holds those  
4 shares in trust for the beneficial owners and as a trustee it  
5 has an obligation to take all reasonable steps to try to  
6 protect the value of what's held in trust, which is here CGFSI  
7 shares and in turn the bank. That is why we are concerned that  
8 a judgment here of \$25 million, which is untethered to the  
9 facts and with respect to the bank has no rational basis, if we  
10 assert claims in the future against the SEC, the SEC will seek  
11 to use this judgment as a setoff. That's our interest here and  
12 that's why we want to object.

13 THE COURT: Anything further?

14 MR. WELCH: Your Honor, there is obviously various  
15 defenses that both parties have asserted. I'm happy to discuss  
16 them and explain why I think they don't have validity if you  
17 would indulge me.

18 THE COURT: This is your opportunity.

19 MR. WELCH: Great. Thank you. With respect to 21(g),  
20 there are three cases in this circuit that have found that  
21 21(g) only applies to compulsory consolidation in multidistrict  
22 litigation. It does not apply to intervention. And if you  
23 read the statute on its face, it does not reference  
24 intervention. It says consolidation and coordination. If you  
25 compare 21(g) with 1407, which is multidistrict litigation,

1 Section A, it uses the same phrase, consolidate and coordinate.  
2 This 21(g) was meant to bar parties from consolidating under  
3 the compulsory multidistrict litigation cases with an  
4 enforcement action. It doesn't talk about intervention on its  
5 face. That's what we are seeking to do here.

6 THE COURT: Doesn't 21(g) start out with the prefatory  
7 language, notwithstanding any other provision of law?

8 MR. WELCH: Yeah, it does, your Honor. But  
9 notwithstanding any other provision of law, the force of 21(g)  
10 shall apply. But the force of 21(g) by its express terms does  
11 not include barring intervention. Intervention does not appear  
12 in the statute.

13 I know your Honor at the last hearing referenced  
14 *Parklane Hosiery*, a Supreme Court case, and there is a footnote  
15 in that case in which the court said, well, perhaps the party  
16 there could not have intervened or actually withdrawn. It  
17 doesn't say intervened. Could not have consolidated this case.  
18 And then if you look at the Eighth Circuit's decision in *Flight*  
19 *Transportation*, the Eighth Circuit specifically discusses that  
20 language and says, that's about consolidation. It's not about  
21 intervention. The statute on its face doesn't talk about  
22 intervention.

23 THE COURT: But the Eighth Circuit doesn't grade my  
24 papers.

25 MR. WELCH: You are absolutely right, your Honor.

1 There is no Second Circuit authority on point. There are three  
2 district court opinions from the Second Circuit, including  
3 *Bancroft* from the Southern District where they held the exact  
4 same thing. On its face 21(g) does not bar intervention.

5 THE COURT: But doesn't every single judge in this  
6 district agree that private claims asserted by non-SEC parties  
7 cannot be brought in enforcement actions filed by the SEC?

8 MR. WELCH: Your Honor, they may, but two points.

9 THE COURT: They do, don't they? Has any judge in the  
10 Southern District held that a non-SEC party could bring a claim  
11 in an SEC enforcement action?

12 MR. WELCH: Not that I'm aware of, your Honor. But to  
13 be clear, we are not seeking to intervene here to assert a  
14 cause of action against the SEC. We are not seeking to  
15 intervene to seek damages from the SEC. We are seeking to  
16 intervene to protect our right to do so in a subsequent action.

17 Again, as a practical matter, we are concerned that an  
18 illusory \$25 million judgment that the SEC waives, I am not  
19 sure what that means, they will use to set off if and when we  
20 get a judgment against the SEC. They are insulating  
21 themselves. They are buying an insurance policy. And they are  
22 not buying it. They are extracting it. And the liquidators,  
23 they have no interest in stopping this.

24 As far as they are concerned, it's not going to be  
25 collected. They are already at 91 or 95 cents on the dollar.



1 Their interest is in making the creditors and the depositors  
2 whole and they are done. They have no interest in my client's  
3 interest, which was the equity interest which was entirely  
4 wiped out by the freeze order here which, as your Honor held,  
5 was based on misrepresentations to this Court about the key  
6 facts here.

7 Caledonian Bank, at the time the freeze order was  
8 obtained by the SEC, it didn't have the allegedly ill-gotten  
9 proceeds in its possession. What's totally lost here is that  
10 almost a year before the SEC came into this courtroom,  
11 Caledonian Bank's own regulator in the Cayman Islands came to  
12 Caledonian Bank and said you know what, I think there is an  
13 issue here with Legacy and Clear Water.

14 As a result, Caledonian Bank and Caledonian Securities  
15 voluntarily shut down those accounts, shut down every related  
16 account they could find, and, with the blessing of their local  
17 regulator, disbursed the funds back to Clear Water and Legacy.  
18 And in doing so they collected documents and they produced them  
19 to their regulator, CIMA, who then produced them to the SEC.  
20 It's not clear based on their papers.

21 I suspect that the SEC had these documents at the time  
22 they came into this courtroom. They had acknowledged those  
23 papers demonstrate what Caledonian Bank has maintained all  
24 along, that it never sold those securities as a principal, that  
25 it never owned the proceeds, that it was acting as a broker,

not a principal.

So when they came into this courtroom, your Honor, and told you that Caledonian Bank and Caledonian Securities owned the securities with lining its pockets with the proceeds by taking advantage of investors in the United States and that the assets they asked your Honor to freeze were the proceeds, ill-gotten gains, they weren't, and they had not been in the possession of the bank for nearly a year. They could have known this. They should have known this. Indeed, I believe they had the documents in their possession that would have made this clear.

This is an unusual circumstance. I fully appreciate that the Second Circuit has narrowly limited the circumstances in which a consent judgment can be objected to successfully, but it didn't close the door entirely.

In particular, the Second Circuit in Citibank left open the possibility, specifically said that, look, when, for example, a consent judgment cuts off the right of private litigants to assert claims, that may be against the public interest. That's our circumstance.

THE COURT: You are not cut off from asserting a claim.

MR. WELCH: Your Honor, we could assert a claim, but under Rule 24 the test is whether as a practical matter, not a legal matter, you are correct. And the SEC has pointed out

1 that there is not a release that we could assert a claim. But  
2 as a practical matter the value or the existence of that claim  
3 is going to be severely impacted by an illusory \$25 million  
4 judgment jointly and severally liable to a bank that didn't  
5 participate in the transaction, that didn't make any money.

6 The Second Circuit left a crack in the door and this  
7 is the case. This is the case where intervention is warranted  
8 and objection to the consent order as drafted, frankly, should  
9 succeed. I want to stress that to intervene under Rule  
10 24(a)(2), we need to have an interest in this action. That's  
11 intervention as of right, not intervention by commission. And  
12 we do have an interest and that interest is to protect the  
13 value of the shares that we hold in trust and that's what we  
14 seek to do. This is not a remote interest. We have the claims  
15 we have today and if your Honor --

16 THE COURT: Didn't you try to advance that very  
17 interest in the Cayman Islands proceeding?

18 MR. WELCH: Your Honor, the issues there were  
19 fundamentally different. The issue there is whether the  
20 liquidator was exercising its business judgment in determining  
21 that it made commercial sense for the estate to enter into the  
22 settlement. The standards here are completely different. The  
23 standards under --

24 THE COURT: Under *Citigroup*, how could this court  
25 force the settling parties to alter the decree?

MR. WELCH: It can't, your Honor. As I understand it, Citigroup gives the Court the opportunity, the thumbs up or thumbs down. One of the requirements of *Citigroup* is that the Court determines that the consent judgment is in the public interest, that it's fair and reasonable and that it has a factual basis. None of those have been shown here. In particular, the public interest. It's not in the public interest for the SEC to use an illusory \$25 million judgment to insulate itself, ensure itself against the liability for its own misconduct.

I want to come back to the collateral estoppel issue. In the Cayman proceeding, the issue that the liquidators in their papers point out, the only issue that was decided there, was whether the proposed consent judgment is in the commercial best interests of Caledonian reflected by the commercial judgment of the liquidator.

Here this is not a settlement, your Honor. This is a consent judgment, a judgment. They are asking this Court to give the stamp of approval and the force of a federal judgment to the terms that they have agreed to.

And so as the Second Circuit said in *Citigroup Global*, this Court is not a rubber stamp. This Court has to make sure that this is in the public interest. The business judgment of the liquidator does not conform with the public interest. The business judgment of the liquidator does not mean that the

1 proposed consent judgment is fair and reasonable.

2 THE COURT: What amount of money does Sentinel believe  
3 should be in place in the consent decree instead of 25 million?

4 MR. WELCH: I'd like to address that, your Honor.  
5 Thank you for bringing it up.

6 THE COURT: I'm giving you only a minute because then  
7 I want to hear from other counsel because we were all very  
8 patient waiting for you.

9 MR. WELCH: Your Honor, again, I apologize profusely.

10 We think there was \$1.3 million recently. The parties  
11 stipulated to reduce the \$7 million fees over to \$1.3 million.  
12 Frankly, that's the appropriate amount and it shouldn't be  
13 joint and several. It should be \$1.3 million against  
14 Caledonian Securities, which is the only entity that made any  
15 money.

16 THE COURT: Isn't that exactly what it will be?

17 MR. WELCH: No, your Honor. It's \$25 million.

18 THE COURT: But you were also objecting to the amount  
19 of money that was frozen, weren't you?

20 MR. WELCH: Right. And the parties strategically  
21 mooted that issue, which I'm fine with, frankly.

22 THE COURT: I thought that's what you wanted on that  
23 score.

24 MR. WELCH: That is what we wanted. But I also think  
25 that the consent judgment shouldn't be any more than \$1.3

1 million and it shouldn't be joint and several. It should be  
2 just against Caledonian Securities, not against the bank.

3 THE COURT: All right. I think I have your argument.

4 MR. WELCH: Again, I apologize, your Honor.

5 THE COURT: Ms. Fitzpatrick.

6 MS. FITZPATRICK: Thank you, your Honor.

7 Your Honor, Sentinel should familiarize itself with  
8 the record of the case in which it seeks to intervene. It  
9 represented to this Court that there was absolutely no basis in  
10 that Caledonian Bank did not participate in the transactions at  
11 issue.

12 On the very first day this case was filed the SEC also  
13 submitted 1900 pages of documentary evidence supporting its  
14 request for an asset freeze. And in that appendix,  
15 specifically on page A173, it shows shares of Swingplane  
16 Ventures being issued in certificates in the name of Caledonian  
17 Bank.

18 Similarly, with respect to another security that was  
19 sold in an unregistered distribution during an active pump and  
20 dump, Goff, at page A368 of the appendix submitted on the very  
21 first day of this case, it shows 8,750,000 shares of Goff being  
22 registered in the name of Caledonian Bank Limited.

23 And similarly on page A634, the SEC submitted evidence  
24 that shares of Norstra, yet another unregistered distribution  
25 Caledonian participated in during an active pump and dump where

1 Caledonian's customers magically made millions on securities  
2 that it never traded before, those shares were certificated in  
3 the name of Caledonian Bank.

4 The SEC has submitted substantial briefing on the  
5 factual predicate for this settlement that include new  
6 documents as well as documents that were presented to this  
7 Court on the very first day of this case.

8 I have no idea what basis counsel for Sentinel has for  
9 suggesting that the SEC had those documents on an earlier  
10 occasion. We have represented to the Court exactly how and  
11 when we received them. If they have evidence to the contrary,  
12 they should share it and we will do due diligence to see if  
13 it's accurate. But a hypothetical assumption that we have  
14 those documents earlier is both unhelpful and almost as  
15 speculative as the claims they seek to bring, your Honor.

16 With respect to Caledonian Bank, I would note that in  
17 the SEC submission in support of this settlement, which was  
18 voluminous and had many exhibits, many of the communications  
19 with the clients or e-mails that showed what could be described  
20 as a troubling business trend being engaged in by Caledonian  
21 security also showed a participant of the individual named as  
22 employee No. 2. He was the managing director of the parent  
23 company, CGFSI, the company whose interests Sentinel now seeks  
24 to stand in the shoes and claims to be the 100 percent  
25 shareholder of.

1           The managing director of CGFSI responded to an e-mail  
2           about the SEC halting trading in Norstra Security, an  
3           unregistered distribution in which Caledonian traded huge  
4           volumes of shares during a pump-and-dump scheme.

5           The managing director of CGFSI responded to an e-mail  
6           about how they better get an SEC insider on the payroll because  
7           this Norstra thing looks bad. And then they continued to  
8           execute the orders of the same clients in a subsequent pump and  
9           dump, an unregistered distribution that was done with the  
10          Zumoni Company.

11          Your Honor, the idea that Caledonian Bank has no  
12          liability here is frankly rebutted by the documents that were  
13          submitted on the first day of this case, and Sentinel has not  
14          referenced a single payment has happened after the first week  
15          of this case. In fact, there is a new complaint in this  
16          matter, an amended complaint. And Sentinel has not identified  
17          a single allegation in the amended complaint that is  
18          inaccurate. So it is completely unclear how it would be  
19          prejudiced by the settlement of this case.

20          Moreover, the idea that the SEC is engaging in an  
21          enforcement action and a settlement to whitewash and insulate  
22          its own conduct is equally ridiculous, your Honor. The terms  
23          of which they complain are standard terms and all SEC consent  
24          decrees about what litigants can and cannot say when they  
25          settle an action, and we can provide examples if your Honor



1 would like. I know your Honor has entered several such decrees  
2 in the past.

3 Your Honor, the disgorgement number here was  
4 extensively briefed and, once again, Sentinel should  
5 familiarize itself with the record of action in which it seeks  
6 to be a party.

7 Your Honor ruled on a motion to dismiss by Vermont  
8 which asked your Honor to dismiss any claim for disgorgement  
9 above commissions. And your Honor correctly recognized that  
10 disgorgement is an area of broad discretion and many factors  
11 may make that appropriate here to impose disgorgement beyond  
12 commissions. Factors such as giving the proceeds back to a  
13 client, which has occurred here. In fact, factors such as the  
14 active participation and assistance in the unregistered  
15 distributions that is shown by the communications attached to  
16 the SEC's memorandum in support of this settlement.

17 25 million represents a compromised number, your  
18 Honor. In litigation the SEC would seek full proceeds and ask  
19 this Court to impose a penalty. But settlements reflect  
20 compromise. Caledonian took the position that it was 1.3  
21 million. We took the position that the appropriate number was  
22 in excess of more than 30 million.

23 There is legal support for that number, including this  
24 Court's own opinion in this case in the recent *Gibraltar*  
25 opinion, also in the Southern District of New York, as well as

1 the reasoning behind the Second Circuit's opinion in  
2 *Contorinis*. Rather than look at any of those cases or this  
3 Court's own opinion on the motion to dismiss that Vermont  
4 filed, Sentinel simply assumes that the settlement is illegal  
5 because there is a \$1.3 million dollar cap, your Honor.

6 Your Honor, Sentinel likes to quote criticisms that  
7 have already been lobbied against the SEC and then say that it  
8 is in the public interests that it be permitted to intervene to  
9 criticize the SEC. Those criticisms are already in a public  
10 opinion that has been issued by this Court.

11 What Sentinel expects to add to that dialogue months  
12 later, when the parties have worked to resolve that action, is  
13 extremely unclear. Sentinel claims to want to submit a brief  
14 in which it criticizes the settlement. It has submitted a  
15 letter and a motion to intervene in which it criticized the  
16 settlement.

17 It has now appeared before this court twice to  
18 criticize the settlement and its purported inaccuracies, such  
19 as that Caledonian Bank did not do anything, do not survive any  
20 scrutiny of the record. Indeed, the declaration of  
21 Mr. Orr-Depner that they submitted in support of these  
22 purported factual inaccuracies is itself false because it  
23 claims the Caledonian Bank played absolutely no role in these  
24 transactions when the certificates were issued for the stock in  
25 Caledonian Bank's name for several of these shares, millions of

1 these shares.

2 I would also note that there are dozens, if not more,  
3 problematic communications between that Caledonian employee and  
4 the client here, Legacy Global, in the Skype messages and  
5 e-mails that we attached to our brief in support of the  
6 settlement. They identify one and claim that it was inaccurate  
7 because they were bragging about their technology, not trying  
8 to assist a pump and dump. But that very technology is what  
9 allowed the shares to be filtered to different market makers in  
10 the United States, different broker dealers in the United  
11 States so that the red flags of matched sales and purchases by  
12 identical clients in the same stocks, with volume exploding,  
13 when they have never traded before, would not be as likely to  
14 be caught by those broker dealers' compliance. Bragging about  
15 that technology is actually bragging about Caledonian's ability  
16 to assist the quick implementation of an unregistered  
17 distribution.

18 Your Honor, we believe the \$25 million figure  
19 reflected in this disgorgement is the appropriate figure and it  
20 is the appropriate figure for programmatic reasons to signal to  
21 others what they can expect in terms of disgorgement in an SEC  
22 enforcement action if they engage in this sort of brazen  
23 conduct, four simultaneous, enormous unregistered  
24 distributions, your Honor.

25 The amended complaint here reflects a repeat violator

1 of Section 5 and the \$25 million figure is intended to reflect  
2 that, to reflect that and its deterrent value, to reflect what  
3 the SEC will seek when it does enforce the securities laws.  
4 Because the public interest discussed in *Citigroup* is not the  
5 public interest of trusts with unknown beneficiaries and  
6 tangential connections to corporations they have placed in  
7 liquidation. It is the interest in the enforcement of the  
8 securities laws by the SEC. That is the governing public  
9 interest and the SEC, as noted by the Second Circuit in  
10 *Citigroup*, is politically accountable if it does not act in  
11 that interest. There is absolutely nothing Sentinel can add to  
12 that discussion and there is no reason that Sentinel should be  
13 appointed as a champion of that public interest when all it has  
14 done to date is quote things that are already in the public  
15 record. They are adding nothing to the debate. They are doing  
16 nothing but unduly delaying the resolution of a case and  
17 imposing additional litigation costs and burden on the SEC and  
18 Caledonian. The law favors consent decrees and it disfavors  
19 intervention in SEC cases.

20 THE COURT: What do you make, if anything, of the  
21 statements in Section 21(g)'s legislative history that its  
22 purpose was to provide an identical exemption from the MDL  
23 statute to the exemption for DOJ in antitrust actions?

24 MS. FITZPATRICK: Your Honor, I read the term  
25 consolidate in its plain meaning. And what intervention is is

consolidating another claim so that it can be addressed in one setting. And what they are seeking to do here is to consolidate the battle they have had with the Cayman Islands in terms of who speaks for Caledonian and interest in unspecified litigation they have yet to file with what is going to happen here. I believe that falls within the ambit of the term consolidation in it 21(g). It says notwithstanding any other law.

The statute does have a phrase for multidistrict litigation, but it does not reference multidistrict litigation in a text or explicitly limit itself to multidistrict litigation. It says notwithstanding any other law, nothing should be consolidated within an SEC action without the SEC's intent. The intent of that statute was to prevent what Sentinel seeks to do here, which is to unduly delay and complicate public enforcement actions.

THE COURT: If Sentinel has been harmed, does the SEC believe that Sentinel could file an action against the SEC?

MS. FITZPATRICK: Yes. We have stated in our papers, they are free to file a complaint. I imagine there will be a very strong motion to dismiss to that complaint on many issues, including standing in sovereign immunity and that may result in protected litigation.

Our position is, they should file a complaint and that complaint can be tested in a courtroom by a judge through

1 motions practice if they truly believe they should be harmed.

2 But this unspecified interest that may be hurt by  
3 unspecified provisions of the consent decree, it's too  
4 indefinite a problem to warrant intervention here. And the  
5 type of litigation we are talking about, the filing of a  
6 complaint, the full briefing and argument of a motion to  
7 dismiss, waiting for an opinion, there is absolutely no reason  
8 to inject that sort of delay into this Court's determination of  
9 the propriety of the proposed settlement between the SEC and  
10 Caledonian.

11 THE COURT: Anything further, Ms. Fitzpatrick.

12 MS. FITZPATRICK: If the Court has no other questions,  
13 no, your Honor.

14 THE COURT: Thank you.

15 Ms. Dale.

16 MS. DALE: Thank you, your Honor. I'll try to be  
17 brief.

18 We think that Sentinel is trying to do an end run  
19 around a number of things in this case; first of all, the  
20 Court-sanctioned decision made by the joint official  
21 liquidators to enter into the settlement which they deemed to  
22 be in the best interests of the estate and the creditors,  
23 namely, entering into a settlement that requires Caledonian to  
24 pay nothing, no fines, no penalties. We also think they are  
25 trying to do an end run around the 1400 creditors of CBL and

1 CSL who did not object to the settlement; also the liquidation  
2 committee of CBL who approved the settlement.

3 We think they are trying to do an end run around the  
4 Cayman court's decision after having heard these same  
5 objections that it raises here, and the Cayman Court rejected  
6 those and approving the joint official liquidators entering  
7 into the consent agreement.

8 They are also trying to do an end run around the  
9 liquidation process that they actually put into motion in the  
10 Cayman Islands. Sentinel is the parent of the parent of CBL  
11 and CSL. Their immediate subsidiary is CGFSI. That company  
12 was put into voluntary liquidation by Sentinel in 2015, and  
13 they agreed to appoint the joint official liquidators of CBL  
14 and CSL as the joint official liquidators of CGFSI. They have  
15 now ceded control of CGFSI in the Cayman Islands to the  
16 liquidators who are the same liquidators as CBL and CSL.

17 Having started that process, now they are trying to  
18 change the exact structure that they put into place and trying  
19 to take back some level of controls, which has been  
20 relinquished and then rejected by the Cayman court.

21 Finally, in terms of what we think they are doing an  
22 end run around is that we are the parties here. CBL and CSL  
23 are the parties here. Under *Citigroup* we have the discretion  
24 to enter into the settlement in the business judgment of the  
25 joint official liquidators if it makes sense, and it does.

1           If they were allowed to intervene, what would that  
2           accomplish? It would upset a settlement agreement. It would  
3           potentially stop the remaining distribution of assets to the  
4           creditors. It would likely force the joint official  
5           liquidators to put more money aside because the Court, as you  
6           said, can't compel the parties to renegotiate the terms of the  
7           consent agreement. If the SEC is not willing to do that, then  
8           we are facing a litigation again with a potential liability of  
9           up to perhaps \$76 million or more. And why would we be doing  
10          that? To litigate a speculative claim that CBL and CSL are not  
11          intending to litigate? This consent agreement judgment does  
12          not preclude Sentinel if they have a direct claim from bringing  
13          it.

14           THE COURT: Suppose that the issue, if you will, that  
15          Sentinel wants to raise is whether the consent decree is fair  
16          and reasonable to the public. How is that addressed by the  
17          Cayman proceeding that focused on the commercial interests of  
18          the creditors?

19           MS. DALE: Your Honor, Sentinel is not wrapping itself  
20          in the public interest here. It is not doing what's right for  
21          the interests of the American public. And so if that's what  
22          they are trying to say they are doing, that's I think a  
23          fallacy.

24           And in the Cayman court the interest of the public was  
25          the creditors of CBL and CSL and that was the focus of the



1 Cayman court consideration of Sentinel's proposals and  
2 objections down there.

3 But Sentinel is only trying to protect Sentinel's  
4 interests here. I think it's just disingenuous for them to say  
5 that they are trying to take on the mantle of the public  
6 interest in this situation.

7 Your Honor, if I have a few more minutes. Sentinel,  
8 what they are asking for has been very confusing and  
9 inconsistent and in their own words they said that they want to  
10 intervene to "preserve its ability as a practical matter to  
11 assert claims directly or derivatively on behalf of  
12 Caledonian." They want to "protect the public interest in  
13 holding the government -- in this case, the SEC -- accountable  
14 for its conduct," "to compel the parties to address" certain  
15 issues relating to the SEC's conduct. But none of these  
16 issues, none of these interests is sufficient in the context of  
17 a motion to intervene and that's what we are here on. It  
18 should be denied.

19 With respect to the direct claim that Sentinel  
20 proposes to bring, if it has one, it can bring it. There is no  
21 release. The consent judgment reads on CBL and CSL only.

22 There is some flip-flopping going on in terms of the  
23 remedy that they have been seeking. On April 12 they told your  
24 Honor that they wanted a settlement that was in the public  
25 interest and damages for itself, to the extent they are

1 available from the SEC. The proposed complaint and  
2 intervention seeks, among other things, an order rejecting the  
3 settlement and an award to Caledonian of all damages  
4 proximately caused by the freeze order. Further inconsistency,  
5 they say in their reply, footnote 1, that they are not alleging  
6 a claim for the loss of its equity interest, so we are not sure  
7 exactly what this direct claim relates to.

8 With respect to perchance bringing a derivative claim  
9 on behalf of CBL and CSL, under our understanding of Cayman  
10 law, which they have not refuted in their papers, is that they  
11 don't have a derivative claim to bring. They are not a  
12 shareholder of CBL or CSL but rather the shareholder of the  
13 shareholder. They are not entitled to bring a derivative claim  
14 under U.S. law, but under Cayman law the rights of the  
15 shareholders here, CBL, CSL --

16 THE COURT: The court reporter is not as invested in  
17 this case as all of us are. Give him a little slack,  
18 especially on a Friday afternoon after 4:00.

19 MS. DALE: It was CBL, CSL, CGFSI, and Sentinel. They  
20 are all Cayman Islands registered entities and therefore under  
21 the internal affairs doctrine the Cayman Islands law is what's  
22 going to determine the rights of the shareholders. So we  
23 submitted an affidavit from the Cayman Islands lawyer --

24 THE COURT: Would you agree that the substantive law  
25 with respect to collateral estoppel in this case would also

1 emanate from the Cayman Islands, not federal law here, because  
2 it was the Cayman Islands that was the rendering jurisdiction,  
3 and isn't that the way it usually goes in a federal -- let's  
4 say in a federal question case where we have state law from a  
5 rendering jurisdiction?

6 MS. DALE: What I would say is that this Court would  
7 be giving comity to the decisions of the Cayman court. I think  
8 that's correct, how your Honor is positing it. I would think  
9 though that if someone were to bring an action in the Southern  
10 District of New York, if Sentinel were to bring an action, if  
11 there was a collateral estoppel emanating from the Cayman  
12 Islands court, I think that this Court would do its own  
13 analysis though of whether the issues were the same and the  
14 issues were litigated fully below.

15 But I think for our purposes, because what was  
16 litigated below is the same issue they seem to be asserting in  
17 this court, collateral estoppel applies and the Court should  
18 give comity to the decision of the Grand Court of the Cayman  
19 Islands.

20 Your Honor, do you have anything else?

21 THE COURT: Anything further?

22 MS. DALE: No. I'm finished.

23 THE COURT: Thank you very much, Ms. Dale.

24 Mr. Welch, if you want two minutes to respond, I'll  
25 give it to you.

1 MR. WELCH: Thank you for indulging me, your Honor. I  
2 appreciate it.

3 First of all, let's be absolutely clear. We want to  
4 submit, to intervene, a brief in opposition to the consent  
5 judgment. That's it. Your Honor has the power to limit the  
6 purposes for which we intervene. That's what we are seeking.  
7 We disagree with the SEC's characterization of those documents.  
8 That's what I want to brief. They say we just assume that  
9 their \$25 million judgment is illegal. No. We don't assume  
10 it. That's what we want to brief. We want to intervene for  
11 that purpose.

12 In terms of the public interest, we are not wrapping  
13 ourselves in the flag. *Citigroup Global*, public interest. A  
14 consent decree made to serve the public interest if it barred  
15 private litigants from pursuing their own claims independent of  
16 the relief obtained under the consent decree. That's our issue  
17 here. Rule 24 talks about practical impact, not --

18 THE COURT: How is your claim barred?

19 MR. WELCH: It's not barred. I'm concerned about a  
20 \$25 million setoff for an illusory judgment that's  
21 disproportionate for the securities entity and is without a  
22 rational basis for the bank. The SEC didn't say that they  
23 wouldn't use it as a setoff and I expect they will.

24 THE COURT: What about all the certificated shares  
25 that were issued to Caledonian Bank?

1 MR. WELCH: Let me call your attention to Exhibit B2  
2 to the Welch declaration in support of our moving papers. It's  
3 docket No. 218-2. This was the first Orr-Depner declaration.  
4 And in paragraph 4 it states: The stock certificates of those  
5 companies were registered in CBL's name, but they were held by  
6 CBL on behalf of its clients.

7 It's my understanding that the bank was a 25-year-old  
8 bank with longstanding relationships with New York and other  
9 American institutions and that they wouldn't do business with a  
10 securities entity which was a newly formed entity, and  
11 therefore it functioned as a bank. It held the securities in  
12 name only, but it was the securities arm that did those  
13 transactions. There was a lot of talk of unduly delaying and  
14 bringing claims in this action.

15 Again, all we are asking for is the opportunity to put  
16 in a brief to oppose some of the things that were said here  
17 today and clarify some of the representations based on what's  
18 already been submitted.

19 With respect to comity, comity is for final judgments  
20 and collateral estoppel under any law the issues have to be the  
21 same. The issues weren't the same. The only issue that was  
22 resolved down in Cayman is whether it was in the commercial  
23 best interest of the estate.

24 Unless your Honor has anything else.

25 THE COURT: Thank you, counsel.

Decision on the motion is reserved. I intend to  
decide this matter promptly.

I also know that I have an ongoing dispute regarding  
reimbursement of expenses. I find that one to be marvelously  
entertaining and I will resolve it shortly. If Vermont were  
here today, I would resolve it now, but I don't know what  
planet they are on.

Have a great weekend.

o0o